IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

WP(C).No. 1988 OF 2007(J)

PETITIONER:

SABEERA RAZAK, PROPRIETRIX,
K.K. STEEL INDUSTRIES, K.K. HOUSE,
4/332, V.K. ROAD, THALAKKULATHUR,
KOZHIKODE DISTRICT.

BY ADV. SRI.R.RAMADAS

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR OF INDUSTRIES
AND COMMERCE, THIRUVANANTHAPURAM.

3. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, KOZHIKODE.

4. THE SALES TAX OFFICER, IV CIRCLE,
KOZHIKODE.

GOVT. PLEADER SRI. SOJAN JAMES.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN, J.

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W.P.(C) NO. 1988 OF 2007

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DATED THIS, THE 24TH DAY OF JANUARY, 2007

J U D G M E N T

Petitioner is the proprietrix of M/s. K.K. Steel Industries, Thalakkulathur, Kozhikode. According to her, the machinery purchased as per Ext.P2, though was second hand machinery, was not used by the previous owner for claiming sales tax exemption. Her unit is entitled for exemption and for deciding the exemption limit the cost of the second hand machinery should also be included. This contention is based on the decision of the State Level Committee on 12.2.1996 produced as Ext.P1 in the case. But in the case of the petitioner, the claim for exemption was rejected holding that second hand machinery will not be eligible for such exemption. On appeal, the State Level Committee held that though in its earlier decision dated 12.2.1996, it was held that second hand machinery would also be eligible for tax exemption provided no tax exemption is granted to the same machinery, the said decision has since been reviewed in its meeting held on 30.9.1999 and decided not to proceed with its own

decision taken on 12.2.1996 until a decision is received from the Government. Government clarified that as per G.O(MS) No. 169/95/ID dated 1.11.1995 second hand machinery will not be qualified for sales tax exemption. Accordingly, the matter was considered and the appeal was rejected. The contention of the petitioner is that the purchase made by her was in 1997 when the decision of the State Level Committee dated 12.2.1996 was governing the filed and the review of the earlier decision by the State Level Committee later in no way can affect her claim for exemption.

2. It is true that if the decision of the State Level Committee has to govern the field regarding eligibility for exemption, a change subsequently made cannot affect the petitioner's case. But the fact remains that exemption has been denied based on the Government Orders issued in this behalf. The State Level Committee is only applying the said law. If as per G.O.(MS) 169/95/ID dated 1.11.1995 second hand machineries are not eligible for exemption, then the State Level Committee could not have overthrown the said Government Order and decided to give exemption even to second hand machineries. This mistake, however, was rectified by the State Level Committee itself. If the petitioner is not entitled to claim exemption for second hand machinery as per G.O.(MS) 169/95/ID dated

1.11.1995, she can not claim the benefit based on a wrong decision rendered by the State Level Committee on an earlier occasion. If the contention is accepted, the result would be to ask the State Level Committee to repeat its mistake in the case of the petitioner also. Petitioner has no case that based on G.O.(MS) 169/95/ID dated 1.11.1995 she is eligible for exemption as respect second hand machinery. If so, the rejection of her appeal cannot be faulted.

The writ petition fails. Accordingly, it is dismissed.

P.R. RAMAN,
JUDGE.

knc/-